IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12076 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VANKAR DALABHAI CHHAGANBHAI

Versus

ASSISTANT EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 12076 of 1994

MR Falgoon Brahmbhatt for RV DESAI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/10/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Falgoon Brahmbhatt for the petitioner and Mr. M.K. Patel, learned AGP for

the respondents. By way of this petition, the petitioner has challenged the award made by the labour Court, concerned in Reference No. 540 of 1987 dated 6.8.1994. Under the said award, the labour court has granted reinstatement with 25 per cent of the back wages for the intervening period. Therefore, the petitioner has challenged the award in so far as it relates to refusal of back wages to the extent of 75 per cent for the intervening period.

This petition was admitted by this court by issuing rule thereon by order dated 30.11.1994.

Learned advocate Mr. Brahmbhatt for the petitioner has submitted that the labour Court has committed error in not granting full back wages. He has submitted that the labour court ought to have appreciated that the other side has not been able to prove gainful employment of the petitioner and it ought to have granted full back wages. He has submitted that before the labour court, termination order has been challenged by the petitioner workman and it was set aside by the labour court on the ground of violation of the provisions of section 25-F of the Industrial Disputes Act, 1947.

On the other hand, learned assistant government pleader Mr.M.K. Patel appearing for the respondents has submitted that looking to the date of termination 26th June, 1984, the dispute was raised by the workman on 18th March, 1987. Thus, there was delay of two years in raising of an industrial dispute by the workman. He has further submitted that though the workman was examined before the labour court vide Exh.15, he has not deposed before the labour court on oath that during the intervening period, he remained unemployed and has not been employed gainfully. According to him, the reference remained pending before the labour court for about more than seven years and there was no evidence before the labour court on oath from the side of the workman that he remained unemployed during the intervening period and in view of that, the labour court was having discretion as regards back wages while granting relief of reinstatement and the labour court in exercise of the discretion, has rightly granted 25 per cent back wages for the intervening period while granting relief of reinstatement which is not required to be interfered with by this Court while exercising the powers under Article 226 and/or 227 of the Constitution of India.

I have considered the submissions made by the learned advocates for both the parties. I have also

perused the award made by the labour court. Looking to the facts of the present case, admittedly, the services of the petitioner were terminated on 26th June, 1984 and he raised the dispute which was raised for adjudication on 18th March, 1987. The matter remained pending before the labour court for a period of about seven years and on 6th August, 1994, the award was made by the labour court. I have also considered the oral evidence of the petitioner workman at Exh. 15 wherein he has not deposed on oath that he has not been gainfully employed during the intervening period. If the petitioner would have deposed on oath before the labour Court that he remained unemployed during the intervening period, then, in that event, the burden would have come on the respondent to establish that he has been gainfully employed during the intervening period. In the instant case, the respondent was, therefore, not required to prove that the workman was gainfully employed elsewhere. According to my opinion, the labour court while granting reinstatement in favour of the petitioner, has taken into consideration the oral evidence of the petitioner, pendency of reference before it for a period of about seven years and has granted only 25 per cent back wages for the intervening period while making an award of reinstatement in favour of the petitioner on the ground of violation of section 25-F of the Industrial Disputes Act,1947. The labour court has also taken into consideration that the workman was daily wager having at least three years' service and while terminating his service, the respondent has not complied with section 25-F of the I.D. Act. Taking into consideration all these aspects of the matter, according to my opinion, the labour court has rightly exercised the discretionary powers and has rightly granted only 25 per cent back wages while reinstating the petitioner workman. According to my opinion, the labour court has rightly exercised the discretion as regards back wages while granting reinstatement. Therefore, there is no error apparent on the face of the record which would require interference of this court in this petition under Article 226 and/or 227 of the Constitution of India. Therefore, there is no reason to interfere with the discretion exercised by the labour court by granting only 25 per cent back wages while reinstating the petitioner workman, in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

In view of these facts, the submissions made by Mr.Brahmbhatt cannot be accepted and the same are hereby rejected.

In the result, this petition is dismissed. Rule is discharged with no order as to costs.

Dt. 14.10.2002. (H.K. Rathod,J.)

Vyas